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MEMORANDUM

TO: MICHAEL LUPIEN
Provider Reimbursement Division
Department of Medical Assistance Services

FROM: ELIZABETH A. MCDONALD
Special Counsel

DATE: February 27, 2007

SUBJECT: Proposed Regulations concerning Reimbursement for School Divisions

I have reviewed the proposed regulations concerning changes to the reimbursement methodology for school divisions.

Based on that review, it is this Office's view that the Director, acting on behalf of the Board pursuant to Va. Code § 32.1-324, has the authority to promulgate these regulations, subject to compliance with the provisions of Article 2 of the Administrative Process Act and has not exceeded that authority. The regulations will enable the director, in lieu of the Board of Medical Assistance Services, to change reimbursement for school divisions from state-wide fee-for-service to a cost settlement process.

The authority for previous emergency regulations as well as these proposed regulations is Chapter 3, Item 302 NN of the 2006 Acts of the Assembly, which states that "[t]he Department of Medical Assistance Services has the authority to implement cost-based reimbursement for special education services furnished by school division

Michael Lupien
February 27, 2007
Page 2

providers effective July 1, 2006. School division providers shall file annual cost reports for these services and the department shall settle reimbursement to actual costs....The Department shall have the authority to enact emergency regulations under § 2.2-4011 of the Administrative Process Act to effect this provision.”

If you have any questions, please feel free to contact me at 786-3890.

cc: Kim F. Piner
Senior Assistant Attorney General